



MCI Telecommunications
Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

July 5, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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JUL 3 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

**Re: Implementation of Section 34(a)(1) of the Public Utility
Holding Company Act of 1935 as added by the
Telecommunications Act of 1996, GC Docket No. 96-101**

Dear Mr. Caton:

Enclosed herewith for filing are the original and nine (9) copies of MCI
Telecommunications Corporation's Reply Comments regarding the above-captioned
matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI
Comments furnished for such purpose and remit same to the bearer.

Sincerely yours,

Lawrence Fenster

cc: Dorothy Conway
FCC
Room 234
1919 M St., N.W.
Washington, D.C. 20554

Timothy Fain
OMB Desk Office
10236 NEOB, 725 17th St., NW
Washington, DC 20503

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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JUL 3 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of:

**Implementation of Section 34(a)(1)
of the Public Utility Holding Company Act
of 1935, as Amended by the
Telecommunications Act of 1996**

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GC Docket No. 96-101

**REPLY COMMENTS OF
MCI TELECOMMUNICATIONS CORPORATION**

**Lawrence Fenster
MCI Telecommunications Corp.
1801 Pennsylvania Ave., NW
Washington, DC 20006**

July 5, 1996

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
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Implementation of Section 34(a)(1))	GC Docket No. 96-101
of the Public Utility Holding Company Act)	
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**REPLY COMMENTS OF
MCI TELECOMMUNICATIONS CORPORATION**

I. Introduction

MCI Telecommunications Corporation ("MCI") respectfully submits its reply comments in response to the Notice of Proposed Rulemaking ("Notice") in the above-captioned docket¹. In the Notice, the Commission proposes to require applicants for Exempt Telecommunications Company (ETC) status to provide a brief description of their planned activities and a sworn statement certifying their compliance with the statutory requirements of Section 103 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), hereinafter referred to as the "1996 Act."

In particular, the Commission requested comments on: (1) whether its responsibilities under Section 34(a)(1) of the Public Utility Holding Company Act of

¹ Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935 as added by the Telecommunications Act of 1996, GC Docket No. 96-101, April 25, 1996.

1935, as amended by the 1996 Act, is limited to a review of the description of an entity's planned telecommunications activities; (2) whether multiple entities seeking ETC status, which are affiliated with the same public utility holding company parent, may file a consolidated application; (3) whether it should limit public comment to the accuracy and adequacy of representations contained in the applications; and (4) whether it should require ETC's to reapply for ETC status upon experiencing a material change in facts that affect its eligibility for ETC status. Eleven parties filed comments on June 17, 1996.

The parties filing comments in this proceeding fall into two groups: (1) those that recommend the Commission expand its proposed filing requirements to include additional information and statements beyond a description of proposed telecommunications activities; and (2) those that support the Commission's tentative conclusion to limit filing requirements to a description of proposed telecommunications activities. The former group is comprised of a broad range of parties, including local exchange carriers, interexchange carriers, electric utility regulators, and ratepayer advocates. The latter group is limited to electric utility companies.

In these reply comments, MCI supports recommendations, made by parties in the first group, for the Commission to expand the filing requirements for application for ETC status that will assist: (1) Federal and State energy regulators to ensure that captive ratepayers, as well as shareholders, are not placed at risk when a utility receives ETC status, and (2) this Commission to ensure telecommunications carriers have nondiscriminatory access to poles, conduits, and other rights-of-way as required

in Section 251(b)(4) and Section 703 of the 1996 Act. MCI also supports recommendations made by parties in the first group, for the Commission to expand the scope of issues parties may raise in their comment on a utility company's ETC application.

II. The Commission Should Expand ETC Filing Requirements

A. ETC Applicants Should Include Information To Assist Energy Regulators In Fulfilling Their Regulatory Mandates

To date, electric utility companies have placed both their captive ratepayers and shareholders at significant risk through their diversification into unregulated lines of business. A 1992 study found that of the 17 electric utilities that had diversified into unregulated lines of business during 1986-1991, the return on equity averaged -5.5 percent.² The State agencies that regulate the retail affiliate of the electric utility holding company applying for ETC status are required to ensure that retail electricity customers that have paid for many of the facilities ETC's will use to enter telecommunications markets share the benefits, and are not liable for failures, from the holding company's entry into a new line of business.

The Energy Policy Act of 1992, Pub. L. 102-486, (EPACT) essentially relieved the Securities and Exchange Commission of its obligation under the Public Utilities Holding Company Act, 15 U.S.C. Sec. 79 *et. seq.* (PUHCA), to prevent abusive practices of retail electric utility companies, by substituting state oversight.³

² See Charles M. Studness, Earnings from Utility Diversification Ventures, Public Utilities Fortnightly, September 1, 1992, 28-29.

³ Energy Policy Act, Title VII, Sec. 32(k)(2)(A).

Accordingly, MCI supports the recommendation of the City of New Orleans, that companies filing for ETC status must verify they have obtained state approval for entry into telecommunications, or have provided state regulators the requisite access to their books and records.⁴ For the same reason, MCI also supports the recommendations of the New Jersey Ratepayer Advocate that companies filing for ETC status also include a “schedule listing all individuals, firms, companies, partnerships and other entities with whom the PUHC and the ETC applicant are affiliated.”⁵ BellSouth’s recommendation that the Commission require potential ETCs to file information concerning the facilities constructed and utilized by the filing company will also assist state regulators prevent ETCs from abusing captive retail customers.⁶

B. ETC Applicants Should Include Information To Assist the Commission In Ensuring Telecommunications Carriers Have Nondiscriminatory Access to Poles, Conduits, and Other Rights-of-way

Comments of ALTS and American Communications Services, Inc. demonstrate that public utility holding companies have discriminated with respect to telecommunications carriers’ ability to gain access to their poles, ducts, and other rights of way.⁷ Now that electric utility companies are able to provide telecommunications services, their incentive to deny competitors nondiscriminatory access to poles,

⁴ Comments of the City of New Orleans at 8.

⁵ Comments of the New Jersey Division of the Ratepayer Advocate at 3.

⁶ Comments of BellSouth at 8.

⁷ Comments of ALTS at 3; and Comments of ACSI at 7.

conduits, and other rights of way under their control has increased.⁸

To increase the likelihood electric utilities will comply with the requirements of Sections 251(b)(4) and 703 of the 1996 Act, MCI supports suggestions by ACSI and ALTS that utilities: (1) certify they will comply with Section 703 of the 1996 act, and (2) submit all rights-of-way agreements between the ETC and any utility affiliate of the holding company, as part of their application for ETC status. The addition of these filing requirements imposes only a *de minimis* administrative burden or delay.⁹

III. The Commission Should Expand The Scope of Comments On ETC Certification

All parties except the electric utility companies contend that the Commission should expand the scope of topics parties may comment on in response to a request for ETC certification,¹⁰ beyond the Commission's tentative conclusion to limit them to "the accuracy and adequacy of the representations contained in the applications."¹¹ Such topics would include information indicating whether the company seeking ETC status has engaged in anticompetitive actions with regard to its ratepayers, shareholders, or potential competitors in its preparation for entry into the telecommunications business. Of course, if the Commission broadens the scope of filing requirements to require electric utility companies to verify they comply with the Commission's pole attachment

⁸ Comments of ALTS at 3.

⁹ Comments of ACSI at 9; Comments of ALTS at 4.

¹⁰ Comments of: ACSI at 10; Comments of ALTS at 6; SWBT at 5; and Comments of City of New Orleans at 6.

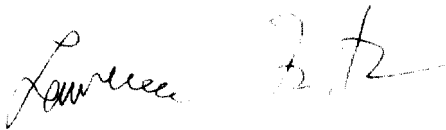
¹¹ Notice at 7.

rules, and that they have supplied state regulators with the information required to prevent cross subsidization, comments by parties pertaining to these issues would by definition limited to the adequacy of the representations contained in the applications.

VI. Conclusion

For the above-mentioned reasons, MCI encourages the Commission to adopt the proposals suggested by MCI herein.

Respectfully submitted,
MCI TELECOMMUNICATIONS CORPORATION

A handwritten signature in cursive script, appearing to read "Lawrence Fenster", followed by a stylized flourish or second signature.

Lawrence Fenster
MCI Telecommunications Corporation
1801 Pennsylvania Ave., NW
Washington, DC 20006
(202) 887-2180

July 5, 1996

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on July 5, 1996.

A handwritten signature in dark ink, appearing to read "Lawrence Fenster", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Stan Miller, do hereby certify that copies of the foregoing Comments were sent via first-class mail to the following on this 5th day of July, 1996.

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